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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,125	11/14/2003	Martha Dubinsky-Witkowski	ZIPJACK 201-KFM	9584
7590	09/28/2005		EXAMINER	
Karl F. Milde, Jr., Esq. MILDE & HOFFBERG, LLP 10 Bank Street - Suite 460 White Plains, NY 10606			YIP, WINNIE S	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 09/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/713,125	Applicant(s) DUBINSKY-WITKOWSKI, MARTHA	
	Examiner Winnie Yip	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>November 11, 2003</u> | 6) <input type="checkbox"/> Other: _____ |

Handwritten signature/initials

DETAILED ACTION

This is a first office action.

Claim Objections

1. Claim 3 is objected to because of the following informalities: the term "the attachment" (line 3) lacks a proper antecedent basis. Appropriate correction is required.
2. Claims 4-7 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim, or amend the claim to place the claim in proper dependent form, or rewrite the claim(s) in independent form. Regard to claim 4, the term "the animal" (line 3) lacks a proper antecedent basis and it is not previously defined in claim 1 but in claim 3. Claims 5-7 are objected as dependent to claim 4.

Due to the confusion, as better understood, the claim 4 is treated as depend to the claim 3 on the merits. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan (US Patent No.2,943,634).

Morgan shows and teaches a protective space device being capable to create play space for a child, comprising: a framework (13) being an umbrella configuration (B) and including a post (12) and a plurality of ribs being pivotally connected to upper end of the post, the ribs being supported by framing means such as an umbrella runner for maintaining the ribs at an angle to the post in an open or closed position (See Fig. 1, col. 2, lines 43-50), and a cover of protective material, having a top portion (C) disposed above the framework, and a trailing portion (1) extending from a top portion and falling toward the ground to create a play space with a partial wall, wherein the trailing portion comprises netting.

5. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Beshorse (US Patent No. 3,899,168).

Beshorse shows and teaches a protective space device being capable to create play space for a child, comprising: a framework comprising a post (20) and an umbrella roof (12) including a plurality of roof ribs (22) being pivotally connected to upper end of the post, a collar (23) and struts providing a framing means for maintaining the roof ribs at an angle to the post in an open or closed position, and a cover of protective material (10) having a top portion (21) disposed above the framework, and a trailing portion (13) extending from a top portion and falling toward the ground to create a play space with a partial wall.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-6, 9-12, 15-16, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaries (US Patent No. 6,385,895) in view of Bilotti (US patent 5,678,587) .

Scaries shows and teaches a protective space device being capable to create play space for a child, comprising: a framework comprising a post (102) and an umbrella roof including a plurality of roof ribs (108a-108f) being pivotally connected to upper end of the post, a slidable collar (124) and supporting ribs (110a-110d) providing a framing means for maintaining the roof ribs at an angle to the post in an open or closed position, and a cover of protective material (202) disposed above the framework to provide a protective cover of a play space for a child, wherein the roof ribs of the framework create a body of animal, and a striking bar (122) providing an additional framing means for shaping a wing section of the body of the animal, and the cover includes a plurality of panels supported by roof ribs respectively to define a at least one head (206) of an animal, a body shell (204) of the animal, and a tail of the animal supported by rib (108a), and a wing panel of animal supported by ribs (108d and 108f). Scaries does not define the device having a trailing portion (13) extending from a top portion and falling toward the ground as claimed. Bilotti teaches a protective space device comprising an umbrella framework, a cover being a netting material (46) and having a top portion disposed above a roof frame portion, and a trailing portion extending from the top portion and falling toward the ground to define a space enclosed by a partial wall. It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the protective space device of Scaries having a trailing cover portion extending from a top portion and falling toward the ground as

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taught by Bilotti to define a partial wall to enclose a play space therein for creating a play space to allow a child play therein.

8. Claims 7-8, 13-14, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scaries (US Patent No. 6,385,895) in view of Bilotti (US patent 5,678,587) as applied to claims 1, 3-6, 11-12 above, and further in view of Williams et al. (US Patent No. 6,296,005).

The claims are considered to be met by Scaries and Bilotti as explained and applied set forth above rejections except the Scaries and Bilotti do not define the panel of the cover comprising at least a leg portion. Williams et al. teach a collapsible protective device, comprising an umbrella framework having a post (32), a plurality of ribs (21) connected to a top of the post, and a cover of protective material disposed above the framework, the cover having a body of an animal including a head portion, a body portion, a tail portion and four legs. It would have been an obvious matter of design choice to a person of ordinary skill in the art, at the time the invention was made, to modify the protective play space device of Scaries combined with Bilotti having the cover being provided a tailing portion and having an animal including leg portions as taught by Williams et al. to create a complete animal picture thereon. One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally well to optionally have an obvious choice of animal configuration and any such distinction would have been obvious as within the ordinary skill in the art to provide choices of configurations to accommodate the interesting of a child.

Citations

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Beyer et al. '440, Visco '193, Morgan '634, and Bisbing et al. teach a protective space device having an umbrella framework covered by a cover material as similar to the claimed invention. Lin '023 and Wu '296 teach various collapsible devices having an umbrella framework providing an animal shape as similar to the claimed invention. Park '164 and Bart '900 teach various frameworks supporting a cover having a toy or animal configuration as similar to the claimed invention.

Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3637

wsy
September 23, 2005